

S.B.CIVIL WRIT PETITION NO.2046/1993
Abdul Gani

V.
State of Rajasthan & Anr.

Date of Order :: 2nd February, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. D.D.Thanvi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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By this petition for writ the petitioner while giving challenge to the proviso to Rule 48(5) of the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred to as "the Rules of 1986") has also challenged the notices dated 6.12.1991 and 29.7.1992.

At the threshold of hearing counsel for the petitioner has withdrawn his challenge to the validity of provision to Rule 48(5) of the Rules of 1986. The Court, therefore, is examining validity of notices dated 6.12.1991 and 29.7.1992 without determining challenge to proviso to Rule 48(5) of the Rules of 1986.

By notice dated 6.12.1991 the Assistant Mining Engineer, Department of Mines and Geology, Sojat City, called upon the petitioner to submit explanation with regard to alleged illegal mining operation by him and for deposition of recovery of sum of Rs.1,07,100/- against royalty with fine for illegal mining operation. The petitioner by a representation

dated 18.1.1992 denied for his involvement in any illegal mining operation. The petitioner in quite unambiguous terms stated that he was not involved in illegal mining operation as alleged. No inspection was made by the authorities of the mining department in his presence or in presence of responsible and reliable persons. The Assistant Mining Engineer, Department of Mines and Geology, Sojat City by a notice dated 14.2.1992 directed the petitioner to deposit the sum of Rs.1,07,100/- within a period of 15 days. A corrigendum was issued thereafter on 29.7.1992 and the sum of Rs.1,07,100/- was enhanced to Rs.2,06,550/-.

The petitioner while giving challenge to the demand made by the respondents stated that no opportunity of hearing was allowed to him by the respondents while demanding royalty and imposing penalty upon him for alleged illegal mining operation. According to counsel for the petitioner the order passed by the Assistant Mining Engineer is also not a speaking and reasoned order.

A reply to the writ petition has been filed on behalf of the respondents stating therein that on inspection the petitioner was found involved in illegal mining operation, therefore, the notices impugned and demand impugned was raised by the department.

Heard counsel for the parties.

There is no dispute that the order imposing penalty under Rule 48 of the Rules of 1986 is a quasi judicial order, such order is always required to be passed after notice and giving an opportunity of hearing to the effected party. Such an order is also required to be a speaking order and finding should be recorded on basis of evidence available about unauthorised excavation or dispatch of the mineral. In the instant case though the notice was given to the petitioner but admittedly no opportunity of hearing was allowed to him and the orders impugned are also non-speaking orders. The orders nowhere mention as to when inspection was made and in whose presence such inspection was made. It also not give any detail of the mining area or the site of illegal mining operation by the petitioner. The notice impugned and the demand impugned made by the respondents, therefore, is illegal on face. The same, therefore, are quashed. However, it is open for the respondents to proceed against the petitioner under Rule 48 of the Rules of 1986 by providing an opportunity of hearing to the petitioner. It is also expected from the respondents to pass a speaking and reasoned order.

The writ petition is disposed of accordingly.

(GOVIND MATHUR),J.

kkm/ps.